IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/07/2002

CORAM

THE HON'BLE MR. JUSTICE P.D.DINAKARAN

S.A.NO.1171 OF 1989

Erode Municipality, Erode
represented by its Commissioner ...Appellant

-Vs-

1.N.Arumugham
2.A.Viswanathan
3.C.Thangavel
4.A.Govindarajan
5.K.Ganesan
6.V.Angamuthu
7.S.K.Syed Bareeth
8.A.K.Kandasami
9.V.C.Periasami
10.K.C.Shanmugham
11.K.Varadharajan
12.A.Vaiyapuri
13.N.Venkatachalam
14.P.Balakrishnan
15.K.P.Murugesan
16.M.K.Raju
17.M.R.Parameswaran
18.M.Subramaniyam
19.K.Bashu
20.K.Manoharan
21.A.Thilagavathi
22.K.Arumugham
23.A.Natarajan
24.S.Dharmalingam
25.C.Nallaswami
26.P.N.Nachimuthu Asari
27.N.S.Shanmughasundaram
28.N.Alagharswami
29.S.Dhanapal
30.V.Raghupathy
31.B.P.Muthusami
32.P.Balusami
33.R.Sundaram
34.M.S.Kannaiyan
35.R.Balasubramaniam

36.A.Seshammal
37.N.Subramaniyan
38.C.Palaniappan
39.K.Muthalip
40.S.P.Chinnusami
41.K.Chenniappan
42.A.Arumugha Mudaliar
43.S.K.Palaniappan
44.A.Sadaiyappa Mudaliar
45.K.S.Ponnusami
46.V.Gururaj
47.N.Surianarayanan
48.V.Pandian
49.S.M.Ramasami
50.P.Bhagyam
51.M.Murugesan
52.V.M.Shanmugham
53.A.Thirunavukkarasu
54.R.Senraiya Chettiar
55.Mumtaj Begum
56.R.Palaniswami
57.M.Krishnamoorthy
58.N.Arumugha Mudaliar
59.P.Rajagopal
60.Santha Lakshmanan
61.P.Thangamuthu
62.L.Palaniammal
63.R.Palaniswami
Respondents 1 to 63 are doing business
at Door No.252, Ghani Market, Brough Road,
Erode Town.
64.Erode Municipal Council represented
by its Chairman, having office in
Brough Road, Erode Municipality,Erode Town
65.Manickavasagam,
Municipal Councellor,Municipal Office,
Erode Town.
66.Viswanathan, Municipal Councellor,
Municipal office,Erode Town.

67.K.Murugesan,Municipal Councellor
Municipal office, Erode Town.
68.R.S.Nataraja Mudaliar,Municipal Councellor,
Municipal Office, Erode Town.

69.S.A.Kuthoos, Municipal Councellor,
Municipal Office, Erode Town.

70.Nedumaran, Municipal Councellor,
Municipal Office, Erode Town.

71.M.K.Raja, Municipal Councellor,
Municipal Office, Erode Town.

72.Amanullah, Municipal Councellor,
Municipal office, Erode Town.

73.Shanmugham Mudaliar, Municipal Councellor,
Municipal Office, Erode Town.

74.S.R.Santhanam, Municipal Councellor,
Municipal Office, Erode Town.

75.A.Muthusami, Municipal Councellor,
Municipal Office, Erode Town.

76.Sundaraswami, Municipal Councellor,
Municipal Office, Erode Town.

77.S.P.Venkatachalam,

78.Pachamuthu Mudaliar

79.M.Lakshmanan

80.V.S.Dharmalingam

81.V.S.Loganathan

82.C.Nallappan ...Respondents

This second appeal filed against the Judgment and decree of the court of the District Judge of Periyar District at Erode dated 2 3.9.1988 passed in A.S.No.138 of 1987.(O.S.No.340 of 1986, Subordinate Judge, Erode).

!For Appellant: Mr.K.Sridhar

^For Respondents3,4,6,8,
14,15 to 18,20, 22 to 28,
30,32,33,39,43,45,48
51,57,58 and 61. : Ms.VedavalliKumar
for M/s K.N.Basha

:J U D G M E N T

The appellant in the second appeal is the first defendant in O.S.No.340 of 1986 laid by the plaintiffs/ respondents herein for
(i) directing the 1st defendant by way of mandatory injunction to give effect to the allotments of shops made in the suit property in pursuance of G.O.Ms.No.615, dated 21.4.1984 as described in the plaint schedule; and

(ii) restraining defendants 3 to 14 (committee members) by means of a permanent injunction from acting in pursuance of the resolution No.4 72 dated 23.7.86 of the 2nd defendant.

2. Contending that inspite of the Government Order in G.O.Ms.No.615, Rural Development and Local Administration Department dated 21.4.198 4 marked as Ex.A1 which provides for allotment of newly built up shops in the market owned by the municipality for a term of three years to those who were in occupation of the shops of the municipality for more than 10 years at the prevailing rate without bringing the same for public auction and for renewal of the lease in the light of G.O.Ms.No.194 Rural development and Local Administration Department dated 1 6.2.1982 for a further term of three years with the enhancement of 3 0% of the rent of the previous term, the plaintiffs/respondents herein, alleging that the first defendant-Municipality/appellant herein by a resolution No.472 dated 23.7.86 constituted a committee for allotment of shops and proposed to bring the shops for public auction, laid the said suit in O.S.NO.340 of 1986 on the file of Subordinate Judge, Erode.

3. The first defendant-Municipality/appellant herein resisted the suit on the ground that G.O.Ms.No.615 dated 21.4.1984 is applicable only in the case of those who vacated the old market for the purpose of constructing new building, but not to the plaintiffs/respondents herein, who continue to be in possession and occupation of the old market. It is further stated that the Commissioner of the first defendant-Municipality/appellant herein forwarded a recommendation to allot the shops in the new market building, without bringing the same for the public auction only in the case of those who were in possession and occupation of the old building for more than 10 years at the market rate.

4. Finding that there is no such qualification provided in the said Government Orders, as contended by the first defendant-Municipality/appellant herein that only those who vacated the shops are entitled for the benefit under the said Government Orders, the Courts below concurrently held that the respondents are entitled for allotment of the shops as per the G.O.Ms.No.615, Rural Development and Local administration Department dated 21.4.1984 and for renewal thereafter as provided in G.O.Ms.No.194 Rural Development and Local administration Department dated 16.2.1982 and consequently held that the resolution No.472 dated 23.7.1986 is valid and also granted a permanent injunction restraining defendants 3 to 14 from acting in pursuance of the resolution No.472 dated 23.7.1986. Hence the above second appeal.

5. The second appeal is admitted on the following substantial question of law:

" Whether the courts below have correctly understood G.O.Ms.No.615 Rural development and Local Administration dated 21.4.1984 marked as Ex.A1?"

6. Placing reliance on a decision of this Court in TAMIL NADU MUNICIPAL SHOP MERCHANTS ASSOCIATION AND ETC. VS. STATE OF TAMIL NADU AND

OTHERS.(AIR 2000 MADRAS 393), the learned counsel appearing for the first defendant/ appellant contends that the plaintiffs/ respondents are not entitled for the benefit of G.O.Ms.No.194, Rural Development and Local administration Department dated 16.2.1982, as the same had already been withdrawn by the Government, even though he concedes that no condition is imposed in G.O.Ms.No.615 dated 21.4.1984 to the effect that only those who are in occupation of the old market in the shop for more than 10 years are entitled for the benefit of G.O. Ms.No.615, Rural Development and Local administration Department dated 21.4.1984 for allotment of shop in the new market without bringing the same for public auction, and as a result, after the expiry of the existing period of lease, the shops could only be brought for public auction.

7. I have given a careful consideration to the submissions of both sides.

8. It is well settled n law, as held in TAMIL NADU MUNICIPAL SHOP MERCHANTS ASSOCIATION AND ETC. VS. STATE OF TAMIL NADU AND OTHERS.(AIR 2000 MADRAS 393) that the municipal authorities are empowered to allot shops by granting licence, by exercising the powers under Section 303 of the Tamil Nadu District Municipalities Act. While exercising such powers, the Municipal Authorities have to take the largest interest of the society into consideration. If certain persons, merely because they bid at the auction and became successful bidders and thereby became entitled to enjoy the right for certain period, are allowed to contend that they must be granted renewal, then there will be no control by the public bodies. If persons let into possession would like to continue as long as possible, then their heirs will be let into possession and it will likewise become a heritable right. Therefore, they cannot be permitted to continue in possession of the shops owned by the Municipality under the guise of right of renewal, and the properties of local bodies cannot be allowed to be fettered by perpetuity.

9. The case of the plaintiffs/respondents herein is also based on a public lease granted, pursuant to a public auction. Therefore, the same cannot be equated to that of a right of tenancy under the Tamil Nadu Buildings (Lease and Rent Control) Act.

10. That apart, even though the plaintiffs/respondents are entitled for allotment initially as per G.O.No.615, Rural Development and Local Administration Department dated 21.4.1984, I do not find any justification to grant the mandatory injunction, as prayed for, for the reason that G.O.Ms.No.194 dated 16.2.1982 had already been withdrawn, on the date of filing of the suit and in any event, the ratio laid in TAMIL NADU MUNICIPAL SHOP MERCHANTS ASSOCIATION CASE, squarely applies to the facts and circumstances of the case, and consequently, the relief sought for by the plaintiffs/respondents herein to continue in possession of their respective shops, claiming right of perpetuity over the same, will be a denial of rights of others.

10a. Hence, I am of the considered opinion that the Courts below have not properly appreciated the spirit and scope of the Government Orders, viz., (i) G.O.Ms.No.615, Rural Development and Local administration Department

dated 21.4.1984; and
(ii) G.O.Ms.No.194 Rural Development and Local administration Department dated 16.2.1982;
particularly in the context of granting consequential benefit of renewal of the shops under the G.O.Ms.194, Rural Development and Local administration Department dated 16.2.1982, as it had already been withdrawn on the date of filing of the suit.

11. The decree and judgment of the courts below are therefore modified to the extent that after expiry of the existing renewal period, the defendant-Municipality/ appellant herein is entitled to take appropriate decision in the matter, by bringing the shops for public auction or in any other manner which is more advantageous to the defendant-municipality/appellant herein, without reference to G.O.Ms.No.194 Rural Development and Local administration Department dated 16.2.1992, as the same had already been withdrawn.

In result, the second appeal is allowed. No costs.

Index:Yes
Website:Yes
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P.D.DINAKARAN,J.
To:
1.The District Judge,
Periyar District, Erode.

2.The Subordinate Judge,
Erode.